

## Regulatory Topics to Watch in 2015

### MEDICAL TREATMENT GUIDELINES

States will continue to look at adopting medical treatment guidelines with the goals of ensuring access to appropriate and consistent care for their injured workers and reducing the number of medical disputes.

While most participants agree that guidelines are an important component of any effective workers' compensation system, there is still debate around the type of guidelines that should be utilized.

Most states are choosing between either developing their own consensus-based guidelines or adopting a nationally recognized body of evidence-based guidelines such as the Official Disability Guidelines (ODG) or the American College of Occupational and Environmental Medicine Practice Guidelines (ACOEM). The timeframe for producing and editing consensus-based guidelines is typically much longer than adopting existing evidence-based guidelines.

The states listed below are making progress towards the adoption, or updating, of guidelines in 2015.

#### **ARKANSAS** – New Guidelines Proposed

The Arkansas Workers' Compensation Commission has proposed changes to Rule 099.30 to include a requirement that the treatment for workers' compensation injuries must be provided in accordance with the current edition of the ODG. The current effective date is July 1, 2015, but with the postponement of recently scheduled public hearings we could see that effective date slip until late 2015.

The workers' compensation cost containment space is constantly evolving.

Managing compliance changes across multiple jurisdictions can be a challenging and almost impossible task.

PRIUM has developed a compliance and regulatory consulting group to assist payors and stakeholders in tracking and managing their ongoing compliance efforts.

This overview discusses several important issues that PRIUM's team will be monitoring closely throughout 2015.

### **CALIFORNIA – Update to the Pain Treatment Guidelines Proposed**

The California Department of Workers' Compensation has proposed new Chronic Pain Medical Treatment guidelines. These guidelines have been debated throughout 2014, and we expect to see them become effective at some point in 2015.

### **MICHIGAN – Creation of New Pain Treatment Guidelines Proposed**

The Michigan Workers' Compensation Agency has passed the new Rule 418.101008 which establish reimbursement rules for opioid treatment for chronic, non-cancer pain. While this is not the adoption of a treatment guideline, it will have a similar effect, as the rule requires the provider to produce a report containing evidence of compliance with several specific standards which are also found in nationally-recognized guidelines.

### **NEW YORK – Recent Update to Pain Treatment Guidelines**

The NY Workers' Compensation Board (WCB) has recently adopted updates to the Medical Treatment Guidelines, including the creation of the Non-Acute Pain Medical Treatment Guidelines, which have an effective date of December 15, 2014. With some questions remaining about some of the specifics in these updates, PRIUM expects some additional clarification in 2015. Additionally, the recent decision by the NY Court of Appeals in *Kigin v. WCB* affirmed that the WCB did not exceed its statutory authority when it passed portions of the Medical Treatment Guidelines. This decision should answer most questions and remove doubts that were hanging over the Medical Treatment Guidelines for most of 2014.

### **TENNESSEE – Development of Pain Treatment Guidelines Underway**

The extensive reforms passed in 2013 included the mandate to adopt Medical Treatment Guidelines by January 1, 2016. The Division of Workers' Compensation, through the Workers' Compensation Medical Advisory Committee, is currently developing chronic pain treatment guidelines modeled after the TN Department of Health's guidelines. This is the first set of the required guidelines to be developed, and we expect to see additional guidelines developed over 2015 in order to comply with the regulation.

## **FORMULARIES**

With WCRI reporting that states could reduce their workers' compensation prescription drug costs by up to 29% by adopting prescription drug formularies similar to that of Texas, PRIUM expects to see significant discussion around this topic in 2015.

Adopting a Texas-like formulary with medical treatment guidelines and a preauthorization process is not something that can be done overnight. It is likely that we will see some states adopt formularies that do not require preauthorization -- essentially lists of medications that are not reimbursable -- but the savings those states will see will not likely be comparable to Texas. Arkansas and Oklahoma are two states that appear to be making the best efforts at replicating Texas' process, and are hoping to replicate the results as well.

## **ARKANSAS – Closed Formulary Rules Proposed**

The Arkansas Workers' Compensation Commission has proposed changes to Rule 099.30 which would create a Drug Formulary, similar to the Texas Closed Formulary (TCF). The Arkansas formulary, like the TCF, would be implemented in two stages: first for new injuries and later for legacy claims. For claims with dates of injury on or after July 1, 2015, all prescriptions with an "N" classification under the ODG would require preauthorization. For claims with dates of injury prior to July 1, 2015, this requirement would not go into effect until July 1, 2016.

Unlike the TCF, this rule, in its current form, does not require payors to take any steps prior to the July 1, 2016 legacy claim deadline. It is likely that we will see additional iterations of the rule which will discuss notification requirements and peer-to-peer discussion requirements. There is currently a public hearing scheduled for January 29, 2015.

## **OKLAHOMA – Closed Formulary Update**

Due to the limited jurisdiction of the new Oklahoma Workers' Compensation Commission, the Commission's closed formulary rules apply only to claims with a date of injury on or after February 1, 2014. Little has been reported by the Commission about the initial impact of the closed formulary. With the formulary effective as of February 1, 2014, PRIUM expects to see an annual report of some type outlining the impact of the formulary in early 2015.

## **TENNESSEE - Closed Formulary Recommended**

The TNDOL's Medical Advisory Committee has recommended that the state adopt a closed formulary after reviewing the results of the TCF. The Division will begin the rulemaking process in 2015.

# PROCESS CHANGES

New legislation and rule-making efforts require continuous adaptation by payors and industry participants to ensure continued compliance. Historically, we see more changes in the summer months, but a few states are making changes that could have a more immediate impact.

## **ARIZONA – Proposed Rules to establish a Preauthorization Process**

The Industrial Commission of Arizona (ICA) is currently reviewing rules governing the preauthorization process. This will not be a mandatory process, but participants in Arizona suggest that it will be frequently utilized by providers who prefer to have an assurance of payment prior to rendering treatment. The process would create timeframes and appeal procedures that do not currently exist under Arizona law. Additionally, the ICA will provide an administrative review process, similar to the IMR process in California and the IRO process in TX.

## CALIFORNIA – Continued Post-Dubon Developments

PRIUM will be watching California over the next several months, as we expect additional clarification of the proper interpretation of the utilization review rules. As the WCAB issues new opinions in the wake of *Dubon II*, the impact of those decisions will be assessed and communicated.

## MONTANA – Changes Impacting the Ex-Parte Communication Process

In the Montana Supreme Court's September decision, *Montana v. Liberty Northwest*, one of Montana's two sister statutes permitting providers in workers' compensation claims to disclose injured workers' healthcare information to payors without notice to the injured worker was declared to be facially unconstitutional. While the constitutionality of the second statute was not under review in that case, it's likely that it would fare no better, if challenged. The Montana legislature will likely respond by attempting to develop new laws to facilitate communication to payors and providers while providing for a higher level of involvement by injured workers to protect their rights under the state constitution.

## NORTH CAROLINA – Preauthorization Rules Updated

On November 1, 2014, 04 NCAC 10A .1001 came into effect. Initially approved in 2012 (but since held in abeyance), this new rule creates and mandates significant procedural requirements for the preauthorization process for surgery and inpatient procedures. While preauthorization is not new to North Carolina, this new rule changes the process considerably. The North Carolina Industrial Commission is currently developing the resources required to execute this new process.

The rule requires compliance from both payors and requesting providers, and tasks the Commission with developing several resources, but the failure of the Commission to provide the elements necessary for compliance have hindered compliance efforts by both payors and providers. PRIUM anticipates additional communication and clarification from the Commission in early 2015, which will hopefully resolve any issues with compliance.

# PRESCRIPTION DRUG MONITORING PROGRAMS

Prescription Drug Monitoring Programs (PDMPs) continue to be a source of legislative discussion. While almost everyone can agree that they are a necessity (everyone but Missouri), the usefulness and effectiveness of each program varies wildly. The successful implementation of a program and basic data collection is the first step in building an effective program that provides some benefit to the state.

Data collection by itself is not overly useful. Requiring prescribers to check the PDMP prior to writing certain prescriptions and making PDMP data actionable are the next steps to building effective PDMP's. Right now, only Kentucky, New York, Tennessee, and Massachusetts require physicians to consult the PDMP prior to writing certain prescriptions, and only Washington State and Kentucky are using PDMP data to identify dangerous situations.\* We expect to see other states add these types of requirements, or at least propose legislation to that effect, in 2015.

\*Michigan - Newly passed administrative rules in Michigan will require mandatory PDMP checks in certain circumstances

## CASE LAW

### FLORIDA – Work Comp Act Ruled Unconstitutional

*Florida v. FWA, No. 3D14-2062.* Earlier this year, a Florida trial judge stated that the Florida Workers' Compensation Act was so watered down by new legislation that it was no longer constitutional. The 3<sup>rd</sup> District Court of Appeal will hear and decide on the case at some point in 2015.

### CALIFORNIA – Additional Clarification of UR and IMR Process

The *Dubon* decisions in 2014 (*79 Cal. Comp. Cases 313* and *79 Cal. Comp. Cases 1298*) created a significant amount of controversy, confusion, and ultimately some clarification in the California utilization review system. With the Workers' Compensation Appeals Board (WCAB) issuing a new en banc decision on October 6, 2014, we can begin 2015 a little clearer than we started it. In the most recent case, the WCAB held the following:

- A UR decision is invalid and not subject to independent medical review (IMR) only if it is untimely;
- Legal issues regarding the timeliness of a UR decision must be resolved by the WCAB, not IMR;
- All other disputes regarding a UR decision must be resolved by IMR;
- If a UR decision is untimely, the determination of medical necessity may be made by the WCAB based on substantial medical evidence consistent with Labor Code section 4604.5., with the employee bearing the burden to establish his or her entitlement to any particular treatment.

While *Dubon II* helped to clarify some of the confusion that was created by *Dubon I*, it still failed to answer all the questions that remain around the UR/IMR process. We expect to see many decisions over the first part of 2015 that will hopefully continue to clarify the proper interpretation of the rules.

Also, some may recall that the *Stevens* case (*Stevens v. WCAB, A143043*) was discussed last summer, in which the 1<sup>st</sup> District Court of Appeals denied review of a lawsuit which challenged the constitutionality of the IMR process. On December 3, 2014, the Court of Appeals issued an Order to Show Cause granting Stevens' request for Writ of Review. There will be renewed interest in this case in 2015 and beyond, as any decision will likely result in an appeal to the Supreme Court.

For more information about any of these topics, or for copies of any referenced documents, rules, publications, or laws, please contact PRIUM's compliance team at: [compliance@prium.net](mailto:compliance@prium.net) or reach out to your account executive.

